



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

March 12, 2018

By ECF

Hon. J. Paul Oetken
United States District Judge
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *States of New York et al. v. Pruitt*, 18-cv-1030 (JPO); *NRDC v. EPA*, 18-cv-1048 (JPO)

Dear Judge Oetken:

I write respectfully in response to the letter-motion of NRDC (Dkt. No. 35 in case no. 18-cv-1048) and the letter of the States (Dkt. No. 39 in case no. 18-cv-1030), both of which object to some of the arguments contained in the Agencies' reply briefs. The Agencies take no position as to NRDC's and the States' request for leave to file a brief surreply, so long as any such surreply is limited to the application of section 1391(e) and/or Fed. R. Civ. P. 13.

In no event, however, should the Court strike the Agencies' arguments that the action "might have been brought" in the Southern District of Texas. *See* 28 U.S.C. § 1404. The cases cited by plaintiffs were appellate cases governed by the more rigid procedures of the Federal Rules of Appellate Procedure; these cases do not warrant striking any arguments here. Moreover, the applicability of section 1391(e) was not raised "first" in the Agencies' reply, but rather was raised in NRDC's and the States' oppositions, and so the issue was fairly a subject of the Agencies' reply. Further, plaintiffs will suffer no prejudice particularly if granted a short surreply, nor will the Court be meaningfully inconvenienced by such a procedure, because the issues are purely legal and can be quickly addressed and considered without meaningful disruption to the management of this case (in which the Agencies' answers are not even due until April). Thus, and particularly in light of the desirability of deciding legal questions based on consideration of all applicable law, the Court should not strike portions of the Agencies' submissions. *See generally Revise Clothing, Inc. v. Joe's Jeans Subsidiary, Inc.*, 687 F. Supp. 2d 381, 387 (S.D.N.Y. 2010) (declining to strike affidavit submitted in reply in absence of prejudice given surreply).

I thank the Court for its consideration of this matter.

Respectfully submitted,

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cc: all counsel (by ECF)